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to the

ROYAL COMMISSION ENQUIRY

into

THE WORKMEN'S COMPENSATION ACT

Submitted by the

ONTARIO MEDICAL ASSOCIATION

244 St. George Street

Toronto 5, Ontario

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BRIEF - ENQUIRY INTO THE WORKMEN'S COMPENSATION ACT

1. The Ontario Medical Association is a voluntary organization of physicians with a membership of 7,500 at the end of 1965. It has members from all branches of medical practice and all areas of the province.
2. As one of the important functions of the Workmen's Compensation Board is to provide and pay for medical treatment of injured workmen, our Association has more than casual interest in the statutory authority under which it operates.
3. The Workmen's Compensation Act gives the Commissioners bureaucratic control over the provision of medical services. To this point we would say that this authority has been used judiciously and that speaking generally, excellent medical and rehabilitative services have been provided to those coming under the jurisdiction of the Board.
4. The shortness of time between the establishment of this Enquiry and the date set for submission of briefs has precluded a proper canvass of our membership. Consequently, in our submission we will deal largely with matters of principle set out in our Statement of Policy and in particular with those principles which are violated in the present Workmen's Compensation Act.

5. FREEDOM OF CHOICE OF PHYSICIAN

The Workmen's Compensation Act gives the Board the right to determine who shall provide medical services to those for whom it has responsibility under the Act. Without abrogating this right, the Board has allowed an injured workman the freedom of initial choice of his physician. At any time during the period of the workman's disability, the Board has the authority to transfer the workman to the care of another physician regardless of the desire of the workman and/or his physician. In the vast majority of cases, this authority is not invoked and the same conditions prevail as in the private practice of medicine.

6. Transfer of patients is usually made because the Board has decided that workmen with certain conditions must be treated by those physicians who have specialist qualification granted by the Royal College of Physicians and Surgeons of Canada in a specialty designated by the Board for the care of the condition in question. There is no doubt that this policy has provided injured workmen with a good quality of medical services. That is not to say that the quality would not be equally good if the attending physician and the workman made the decision as to choice of physician.
7. The ordinary citizen not coming under the jurisdiction of the Workmen's Compensation Act is subject to the same conditions as workmen for whom

the Board is responsible. These citizens have free choice of physician throughout the period of their disability and in our opinion they are provided with an excellent quality of medical services.

8. The Council of our Association, in discussing the principles involved, concluded that the physician chosen by the patient was more likely to guide the patient to a higher quality of medical services because of his personal interest in his patient's welfare and the day-to-day knowledge of the abilities of his colleagues. This conclusion was set out in our Policy Statement, as follows:

"The individual citizen must have the right of freedom of choice of doctor and freedom of choice of hospital within the limits of safety to others."

9. We recommend that the Act be amended to state clearly that those coming under the jurisdiction of the Board have freedom of choice of doctor.

10. FREEDOM TO DEAL DIRECTLY WITH WORKMEN'S COMPENSATION
BOARD PATIENTS

The Workmen's Compensation Act gives the Board the right not only to choose the workman's physician but also the right to determine the value of the physician's services. Whatever fee the Board determines is fair and equitable for the services rendered must be accepted by the physician as full and final payment.

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11. During the past few years, the fees allowed by the Board have approximated those set out in the schedule of fees approved and published by our Association. Thus we are not complaining, at this time, about the appropriateness of the fees allowed.
12. We are objecting to the unilateral action which the Act empowers the Board to take in the determination of professional fees. Our Association believes that a physician's primary responsibility is to his patient and that he should be able to look to his patient for the payment of his fee. The Act specifically denies physicians the right to bill any patient coming under the jurisdiction of the Board.
13. We recommend that the Act be changed:
 - 1) To allow a physician, who so desires, to bill his patient directly; and
 - 2) To allow the Board to reimburse the patient the Board's scheduled fee for the services rendered.
14. APPEAL PROCEDURE

It is our understanding that the appeal structure under the present Workmen's Compensation Act provides for four levels of appeal - Claims Department, Review Committee, Appeal Tribunal and the Board.
15. Our comments will be confined to the matter of medical evidence provided to the appellant. We believe the current practice is to provide the

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appellant with a summary of evidence, including a summary of medical reports. We are aware that there are those who feel strongly that instead of a summary the appellant should be provided with a copy of the total evidence, and in particular, with a copy of the complete medical reports.

16. In our opinion, medical reports should be treated as privileged documents and thus not made available to the appellant even in summary form. We feel this way because physicians reporting to the Board try to be as helpful as possible to the doctors employed by the Board and thus write their reports as one doctor writing to another. Technical language is used and all information and observations are reported in a frank manner.
17. The purpose of the reports is to assist the doctors working in the claims department to make a fair assessment of the medical aspects of the claim. To do this they must be provided with all relevant information about the particular matter in question. There is no problem so long as the reports are privileged documents.
18. What will happen if medical reports are not privileged? It must be remembered that the majority of compensation cases are treated initially by their family physicians. If medical reports are not privileged, then family physicians are not going to put anything in their reports which they do not want their patients to know. In other words, their reports

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will no longer contain all the information which might be required to make a fair assessment of the claim.

19. Moreover, a family doctor practising in a community, and especially in an industrial community, is dependent upon compensation cases among others to build up his practice and his reputation. Being human, he is not going to jeopardize his reputation with patients or the union active in his community by putting in his reports to the Board information which might be interpreted as prejudicial to workmen's claims even if it is information which he feels the Board requires to make a proper assessment of the claims.
20. Finally, if his reports are not to be privileged, the physician will have to write his report in the knowledge that anything said therein may be the basis for an action for libel.
21. For all of these reasons, we hold strongly to the opinion that if the purpose to be served by medical reports is to provide the Board with all the information doctors have in their possession which is likely to have a bearing on the proper assessment of a claim, then medical reports should be privileged documents.
22. PROTECTION FROM SUIT

We are interested in Section 9 of the Workmen's Compensation Act because many doctors and their office staffs have availed themselves of

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the opportunity of coverage under Schedule I. It is our understanding that a citizen so covered, who has an accident with another vehicle while driving in the course of his work, cannot take any action against the driver of the vehicle or his employer if the driver is also covered under Schedule I.

23. The citizen's right to take action has been removed by the provisions of the Act. He cannot even elect to refuse compensation and take action, nor can the Board take action on his behalf.

24. We are not aware of the reason why the Act was written in this way, but feel that it works a particular hardship on those covered by the Act under Schedule I whose income is considerably above the maximum on which compensation is allowed.

25. We recommend that there be the same provisions as pertain if the driver at fault is covered under Schedule II or not covered by the Act at all. In this situation it is our understanding that the citizen may elect to refuse compensation and take action or, alternatively, elect to take compensation and give the Board discretion to take action on his behalf.

26. PRACTITIONERS REGISTERED UNDER THE DRUGLESS PRACTITIONERS ACT AND CHIROPODISTS REGISTERED UNDER THE CHIROPODY ACT

We approach this subject with some diffidence as we are aware:

1) That a recommendation made by the College of Physicians and

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Surgeons of Ontario and our Association, in a joint presentation to the Enquiry conducted by Mr. Justice Roach in 1950, that the definition of medical aid be amended by deleting the words "the aid of drugless practitioners registered under the Drugless Practitioners Act" was not accepted; and

- 2) That it was announced by Hon. John Robarts, Prime Minister of Ontario, during the last session of the Legislature, that a Committee on the Healing Arts had been established with terms of reference which included an examination of "The merit of the services and practice of all the disciplines associated with the healing arts."

27. In these circumstances, we would be surprised if any recommendation emanated from this Enquiry relative to the appropriateness of medical aid, including the services of drugless practitioners registered under these Acts. Our decision to comment arose out of our observation that once a group becomes recognized by statute, constant pressure is applied to grant members of the group additional privileges and additional recognition.

28. We recommend that any requests for additional privileges or recognition be refused as it is our considered opinion that drugless practitioners registered under these Acts do not possess sufficient medical knowledge to enable them to make a complete assessment of an injured workman.

29. THE PARTIALLY DISABLED

A problem arises where a workman has recovered sufficiently that in the opinion of his physician he is able to do modified work and the employer does not have any work for him which falls into this category. When this situation develops, the workman's recovery is delayed because he is denied the rehabilitative process associated with work. Furthermore, if his compensation benefits are reduced because he has been certified as fit for modified work, his recovery may be delayed still longer because of the psychic trauma imposed by being denied work and at the same time penalized financially for not working.

30. It is our view that the Board has responsibility for the vocational conditioning and training of injured workmen. At the present time the Rehabilitation Unit at Downsview deals primarily with severely injured workmen.

31. We recommend

- 1) That the Board start a pilot Vocational Conditioning and Training Unit where those with less severe injuries could be conditioned for full employment and, if necessary, retrained for employment, in keeping with their status at the completion of the rehabilitation program.
- 2) That full compensation be paid in those situations where the employer does not have modified work in keeping with the ability of the workman.

32. PENSIONERS

An area which requires study is the feasibility of a provision in the Act whereby the amount of pension paid to injured workmen or their dependents would keep pace with the cost of living. This study may provoke discussion about the relative responsibility of the Board and society as a whole. The introduction of the Canada Pension Plan, the Canada Assistance Act and discussion about a negative income tax and a guaranteed annual income leaves the matter rather clouded.

33. Our only concern is that the pensioner be provided with an amount of pension which continues to be appropriate as economic indices, such as current wage levels and the cost of living index, change significantly as they have during the last several years.

34. CLASSIFICATION OF THE DEFINITION OF "ACCIDENT"

In 1963, an amendment to the definition of an 'accident' in the Act, added a few simple words and changed one of the main philosophies behind the original Act. These words were: "disablement arising out of and in the course of employment." This revision now makes it possible for an employee to be considered for compensation for practically any medical condition which occurs during the course of his working day without it necessarily being related to an accidental injury or exposure to a toxic material in the course of his duties.

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35. It is our experience that the Compensation Board is now accepting for compensation, cases which, a few years ago, would have been turned down as not being related to an accidental event. exposure to a toxic material, undue strain, etc. For example, if an employee reaches across a desk to pick up a 6-ounce paper stapler and feels a pain in his back at this time, it is now possible for him to receive compensation under the new interpretation to the few words mentioned earlier.
36. It may never have been the intent, when the legislation of April 1963 changed the Act, to accept such cases for compensation, but unfortunately this is what is actually happening. This broadening of the concept of what is compensable, we feel, is a far cry from the original intent of the Act which was to compensate a workman whose injuries arose out of negligence on the part of his employer or poor judgement on the part of the employee, either of which produced an accidental event and a resulting injury.
37. As physicians, one of our duties is to assist employees who have been sick or injured to return to gainful, safe employment, in keeping with their current disability. Employers, employees, unions and attending physicians have been most co-operative in this rehabilitation program. If, however, employers are to be saddled with compensation for most conditions which occur to an employee while he is at work, regardless of accidental event, then we fear that the rehabilitation program will suffer. In other words,

employers who are now prepared to assist a disabled employee back to some form of gainful employment, will resist this type of effort if they feel that they may have to pay compensation to the employee for life if his condition recurs while he happens to be at work.

38. For example, many adults, both male and female, have occasional bouts of low back pain which respond quite well to conservative treatment and usually do not interfere with the abilities of the person to perform most duties.

Many of the bouts of pain start with simple movements such as bending over to pick up a shoe or tie pin, leaning forward to shave, etc. An employee with a history such as this, who has a recurrence while at work, when there is no accidental event or undue strain, may find it very difficult to be rehabilitated into his previous employment or to obtain new employment if the Company is held responsible for what is primarily an unrelated human defect.

39. While it may be argued that the change in legislation was not intended to broaden this concept in this manner, and that the Board would continue to relate compensation to accidental events, the facts are that there has been a gradual increasing number of cases accepted for compensation which were not related to accidental events under the old interpretation of the word "accident."

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40. If it is the intention of the Act to provide a form of industrial medicare, so that employers are to be responsible for any condition that occurs while an employee is on duty, then no change is required in the present Act.
41. If it is the Government's intention to continue to lead the way both in Canada and the United States in the field of Workmen's Compensation, then we recommend that the Act be returned to its original intent and the definition of accidental event be clarified.

42. PREVENTATIVE MEASURES

Our Association is interested in measures designed to lessen the number and severity of accidents. We believe there are four aspects which should be consolidated under the jurisdiction of the Board. These are:

- 1) Accident Prevention Associations - now a function of the Board;
- 2) Accident Cause Research - Medical and Engineering;
- 3) Experimental Testing of Safety Devices - Engineering;
- 4) Accident Museum - Mechanical Displays.

43. We recommend that the Board be made the responsible body by statute for these four important aspects of prevention.

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THE ONTARIO MEDICAL ASSOCIATION RECOMMENDS:

- I That the Act be amended to state clearly that those coming under the jurisdiction of the Board have freedom of choice of doctor. (paras. 5-9)
- II That the Act be amended:
 - a) To allow a physician, who so desires, to bill his patient directly; and
 - b) To allow the Board to reimburse the patient the Board's scheduled fee for the services rendered. (paras. 10-13)
- III That all medical reports be privileged documents. (paras. 14-21)
- IV That citizens covered under Schedule I be granted the right to refuse compensation and take action against the driver of a vehicle covered under Schedule I or, alternatively, take compensation and give the Board discretion to take action, under similar provisions as apply if the driver is covered under Schedule II or not covered at all. (paras. 22-25)
- V That no additional privileges or recognition be granted to practitioners registered under the Drugless Practitioners Act or the Chiropractic Act. (paras. 26-28)
- VI
 - a) That the Board start a pilot Vocational Conditioning and Training Unit.
 - b) That full compensation be paid in those situations where the employer does not have modified work in keeping with the ability of the workman. (paras. 29-31)

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- VII That the pensioner be provided with an amount of pension which continues to be appropriate as economic indices, such as current wage levels and the cost of living index, change. (paras. 32 and 33)
- VIII That the definition of accidental event be clarified to the end that incidental happenings not related to an accident be excluded. (paras. 34-41)
- IX That the Act be amended to consolidate preventative measures by placing them under the jurisdiction of the Board. (paras. 42 and 43)

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August 1966

